

# **Sonos, Inc.’s Motion *In Limine* No. 1**

## **EXHIBIT A**

**(Filed Under Seal)**

\*HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY\*

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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SONOS, INC.,  
  
Plaintiff,  
vs. Case No. 3:21-CV-07559-WHA  
GOOGLE LLC,  
Defendant.

-----x  
-AND-  
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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
-----x  
GOOGLE LLC,  
Plaintiff,  
vs. Case No. 3:20-CV-06754-WHA  
SONOS, INC.,  
Defendant.

-----x  
\*HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY\*

REMOTE VIDEOTAPED DEPOSITION BY VIRTUAL ZOOM OF  
CHRISTOPHER BAKEWELL  
Tuesday, January 31, 2023  
  
Reported By: Lynne Ledanois, CSR 6811  
Job No. 5683612

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UNITED STATES DISTRICT COURT  
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SONOS, INC.,  
  
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GOOGLE LLC,  
Defendant.

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UNITED STATES DISTRICT COURT  
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GOOGLE LLC,  
Plaintiff,  
vs. Case No. 3:20-CV-06754-WHA  
SONOS, INC.,  
Defendant.

-----x

Videotaped deposition of CHRISTOPHER  
BAKEWELL, taken in Houston, Texas commencing at  
9:37 a.m. Central on Tuesday, January 31, 2023,  
before Lynne Ledanois, Certified Shorthand Reporter  
No. 6811.

REMOTE APPEARANCES

Counsel for Sonos LLC:

LEE SULLIVAN SHEA & SMITH LLP

BY: SEAN SULLIVAN

Attorney at Law

656 W Randolph Street

Suite 5W

Chicago, Illinois 60661

sean@ls3ip.com

Counsel for Google LLC:

QUINN EMANUEL URQUHART & SULLIVAN, LLP

BY: JOCELYN MA

Attorney at Law

50 California Street

22nd Floor

San Francisco, CA 94111

jocelyn.ma@quinnemanuel.com

ALSO PRESENT:

John MacDonell, Videographer

1 Q 1.26 trillion U.S. dollars. Thank you. 9:48AM  
2 Let's go to -- let me find page for you,  
3 one second.  
4 A My report?  
5 Q Let's go to your report. It's Page 6 of 9:49AM  
6 your report, just Page 12 of the PDF.  
7 You've got a heading there that says "1.3,  
8 Summary of Opinions."  
9 A Page 6, yes.  
10 Q Now, your task is to assume that there's 9:49AM  
11 liability, right, for infringement of the '033  
12 patent, the '966 patent and the '885 patent; right?  
13 A That's true.  
14 Q So those are valid and infringed patents  
15 as far as you're concerned; correct? 9:49AM  
16 A Correct.  
17 Q What is your opinion as to what the  
18 damages should be for the '033 patent?  
19 A What a reasonable royalty should be?  
20 Q Yes, if that's what your damages opinion 9:49AM  
21 is, correct.  
22 A Less than \$2.6 million.  
23 Q What does "less than \$2.6 million" mean?  
24 A It means what I described in my report,  
25 there's what I understand to be commercially 9:50AM

1 acceptable non-infringing alternatives that are 9:50AM  
2 broader in scope than just the '033 patent to  
3 implement a non-infringing alternative for the '033  
4 patent at the time of the hypothetical negotiation  
5 would have been less. 9:50AM

6 And so the \$2.6 million is a -- I think a  
7 fair measure.

8 I wrote about this in Paragraph 35 and  
9 then elsewhere.

10 Q Okay. I guess I'm just taking issue with 9:50AM  
11 your qualification that it be less than  
12 \$2.6 million.

13 How much less than \$2.6 million should it  
14 be?

15 A Right now I don't have a specific amount as 9:51AM  
16 to how much less. It's something less than  
17 \$2.6 million based upon the information that I  
18 reviewed to date.

19 Q Could it be zero?

20 A No, I don't think so. 9:51AM

21 Q You have to give a reasonable royalty;  
22 right?

23 A Well, I think that's true, but I also think  
24 that it's -- I think that's true -- as I understand  
25 it, that's a requirement of like a reasonable royalty 9:51AM

1 has to be a significant -- it has to be an amount. 9:51AM

2 It can be insignificant or de minimus, I  
3 guess, which is an amount but -- so that's what I  
4 understand the rules to be.

5 But I also understand the fact here that 9:52AM  
6 there's costs that would be associated with  
7 implementing a non-infringing alternative.

8 Q Do you believe the cost of implementing a  
9 non-infringing alternative could reduce the damages  
10 award to zero or something close to zero? 9:52AM

11 A In this case?

12 Q Yes.

13 A No, I don't think so. That's -- I haven't  
14 seen that evidence for the '033 patent. My mind would  
15 be open to it if somebody from Google explained that 9:52AM  
16 that was so and there was technical opinion to support  
17 that as well.

18 But I haven't seen that for the '033  
19 patent.

20 Q Let's take a look at Paragraph 19 of your 9:52AM  
21 report.

22 A Okay.

23 Q The last sentence there makes a reference  
24 to a 1:1 -- that's one, colon, one -- economic  
25 relationship between the '033 patent and YouTube 9:53AM

1 Q Sorry, I meant paragraph, sorry, 11:29AM  
2 paragraph.

3 A You probably said it, I just misheard you.  
4 I got it.

5 Q I think we started down this path and I'm 11:29AM  
6 sorry I didn't finish it earlier.

7 I asked you about what your opinion was as  
8 to the damages for the '033 patent and I think you  
9 said less than 2.6 million; is that right?

10 A Yes. 11:30AM

11 Q How about the same question for the '885  
12 patent, what is your opinion as to what the damages  
13 should be for infringing the '885 patent?

14 A Less than \$200,000.

15 Q Okay. And how about for the '966 patent, 11:30AM  
16 what is your damages opinion for how much Google  
17 should be awarded for infringing the '966 patent?

18 A Less than \$200,000.

19 Q Now, for -- so we're in this world again  
20 where you've assumed that there is liability for 11:31AM  
21 infringement of the '885 and '966 patents; correct?

22 A Yes.

23 Q So now, do you add these two figures of  
24 \$200,000 together or is it your position that Sonos  
25 is only entitled to one of them? 11:31AM



1 like taking an issue off the table for understanding 11:32AM  
2 these numbers, the way I described it is you can add  
3 all three together, but that would overstate the  
4 amount of a royalty.

5 And it's an issue for Mr. Malackowski in 11:33AM  
6 that his royalty is already overstated and this  
7 overstates the royalty even further because he has  
8 not dealt with the double counting.

9 He's also trying to accumulate value  
10 associated with units and he's double counting that 11:33AM  
11 value.

12 There is an issue in that he takes the app  
13 IFTTT which is sold once and his royalty counts it  
14 twice in certain instances.

15 That's like a -- it's an analytical issue. 11:33AM  
16 BY MR. SULLIVAN:

17 Q I'm sorry, are you through with your  
18 answer?

19 A I'm through. You don't have to apologize.

20 Q I just don't want to interrupt you, that's 11:34AM  
21 all.

22 A I'm finished.

23 Q Okay. Now, you've based these numbers  
24 that we've been talking about for your damages  
25 awards on the cost of implementing commercially 11:34AM

1 acceptable non-infringing alternatives; is that 11:34AM  
2 correct?

3 A That's right.

4 Q What if there are no commercially  
5 acceptable non-infringing alternatives, what would 11:34AM  
6 your damages award be?

7 A I think --

8 MS. MA: Objection to form.

9 THE WITNESS: The next best measure is  
10 comparable patent acquisitions. 11:34AM

11 BY MR. SULLIVAN:

12 Q Do you set forth those numbers in your  
13 expert report?

14 A Yes.

15 Q What would those numbers be? We'll start 11:35AM  
16 within infringement of the '033 patent.

17 A I have it in a few places. \$250,000. It's  
18 in Footnote 50, for example.

19 Q Okay. And how about for the '885 patent,  
20 what would be your damages award if there were no 11:35AM  
21 commercially acceptable non-infringing alternatives?

22 MS. MA: Objection to form.

23 THE WITNESS: No more than 2.25 million  
24 would be the next in line. And then if

25 Mr. Malackowski is -- if the trier of fact considers 11:36AM

1 what he has, I've also provided adjustments to that 11:36AM  
2 and shown how his calculations are incorrect. That  
3 would be additional data to consider.

4 But I think the next best measure would be  
5 these comparable patent acquisitions. 11:36AM

6 BY MR. SULLIVAN:

7 Q How about for the '966 patent, what would  
8 be the damages award if there is no commercially  
9 acceptable non-infringing alternatives?

10 A I think the next best measure is \$250,000 11:36AM  
11 and then it depends if the trier of fact considers  
12 Mr. Malackowski's numbers, I think his theories can be  
13 adjusted or reconciled to a number close to this to  
14 the extent that they are considered.

15 Although I think there's real issues with 11:37AM  
16 his theories.

17 Q In your showdown report, you said the  
18 damages for the '885 patent should be no more than  
19 \$5,000; right?

20 A I think so. 11:37AM

21 Q What changed?

22 A Well, it's a different proceeding. I think  
23 I have more information. I think that I, in this  
24 report include, even though Mr. MacKay said that it  
25 wouldn't belong, for purposes of being more inclusive 11:37AM

1 I, LYNNE M. LEDANOIS, a Certified  
2 Shorthand Reporter of the State of California, do  
3 hereby certify:

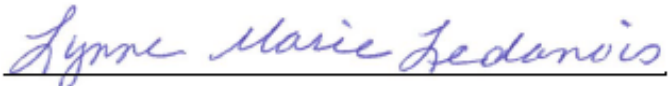
4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that a record of the proceedings was made by me  
7 using machine shorthand which was thereafter  
8 transcribed under my direction; that the foregoing  
9 transcript is a true record of the testimony given.

10 Further, that if the foregoing pertains to  
11 the original transcript of a deposition in a Federal  
12 Case, before completion of the proceedings, review  
13 of the transcript ☐ was ☒ wasn't requested.

14 I further certify I am neither financially  
15 interested in the action nor a relative or employee  
16 of any attorney or party to this action.

17 IN WITNESS WHEREOF, I have this date  
18 subscribed my name.

19 Dated: February 1, 2023  
20  
21

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23

24 LYNNE MARIE LEDANOIS

25 CSR No. 6811